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THE SUPREME COURT OF ARIZONA
JUNE 19, 2017

Chief Justice, Scott Bales

In the Matter of:

**EQUAL REMOTE ELECTRONIC
ACCESS AND FILING PRIVILEGES TO
PARTIES OF AN ACTION INCLUDING
PRO PER LITIGANTS AND
ATTORNEYS**

SUPREME COURT:

**PETITION FOR EXPEDITED
ADMINISTRATIVE ORDER
PER RULE 28 (G) RE:
SUPREME COURT RULE 123
PUBLIC ACCESS TO THE
JUDICIAL RECORDS OF
THE STATE OF ARIZONA**

Pursuant to Rule 28 (G) RULES OF THE ARIZONA SUPREME COURT Rule 28, Procedure for Adoption, Amendment or Repeal of Rules, Petitioner requests an emergency expedited amendment of Supreme Court Rule 123 which has been found to present an urgent matter of unequal provision of remote electronic access to records and filing privileges given to only attorneys in active cases, inclusive of Family Law Cases, while denying pro per litigants of the same. This situation presents compelling circumstances rendering the annual rule processing cycle inadequate. Equal remote electronic access and filing privileges to records must be provided to both parties immediately.

A. Pursuant to Supreme Court Rule 123. Public Access to the Judicial

Records of the State of Arizona: Authority and Scope of Rule: Pursuant to

the administrative powers vested in the Supreme Court by Article VI, Section 3, of the Arizona Constitution, and the court's inherent power to administer and supervise court operations, this rule adopted to govern public access to the records of all courts and administrative offices of the judicial department of the State of Arizona.

B. Pursuant to ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 1: Judicial Branch Administration Chapter 5: Automation Section 1-506: Filing and Management of Electronic Court Documents

B. Purpose. This section provides administrative requirements, standards and guidelines to enable Arizona courts to implement a uniform, statewide, electronic filing system and to achieve the reliable, electronic exchange of documents within the court system as well as between the court and court users.

C. Authority. Consistent with Rule 124, Rules of the Supreme Court of Arizona and related administrative orders, electronic filing is authorized as part of a uniform, statewide approach. All pre-existing, local electronic filing systems shall be transitioned into the statewide system, AZTurboCourt, using a timetable ordered by the supreme court in specific administrative orders.

F. Communications. The statewide electronic filing system shall:

1. Provide for electronic filing via the Internet and

2. Provide for appropriate party, attorney, arbitrator, public, and governmental entity access, in accordance with Supreme Court Rule 123, using standard browser technology.

C. It is imperative that for an opportunity for justice, access for both parties, not just one, is necessary. This petition requests the Supreme Court emergently amend its own Rules of the Arizona Supreme Court Rule 123 “(g) Remote Electronic Access to Case Records” (see attachment SCRule123) to provide equal remote electronic access for both sides of litigation, inclusive of the Pro Per party of a case, immediately. Remote electronic access and filing privileges are provided to only attorneys, but Pro Per litigant is denied. This amendment must become effective immediately. Either both parties receive remote electronic access and filing privileges or both do not.

1. If the Presiding Judge of the Superior Court provides electronic access and filing privileges to an attorney, the privilege must also be provided to the pro se litigants. Inclusive of Family Law Cases, immediately.
2. This expedited emergency amendment is necessary to cease the unequal provision of remote electronic access and filing privileges to records that are currently provided to only attorneys in active cases, even those in

Family Law cases, one of which the Director of Government Affairs of the Judicial Council states “they” will not Order the Pima County to remove attorney’s remote electronic access (to make access equal) because:

“it is now technologically provided and available.”

Jerry G. Landau,
JD Director of Government Affairs,
Arizona Supreme Court

3. Pro per litigants and parties upon petition, have been denied remote electronic and filing access by the Presiding Judge (Pima County) even as a party to their own active cases and pursuant to Supreme Court Rule 123 Public Access to the Judicial Records of the State of Arizona (g)(see attachment SC Rule 123), and A.R.S. 12-284.02(A)and A.R.S. Sup. Ct. Rules, Rule 94, Rule 94 Superior Court Clerks (h) which indicates all records in custody of the Clerk will be maintained according to this rule, Rule 29, and Rules of the Supreme Court.
 - a. The Pima County Superior Court currently provides remote electronic access and filing privileges to only attorneys.

1. (current) A.R.S 12-284.02. Electronic filing and access; fee

A. The Presiding judge of the Superior Court may provide for the electronic filing of documents and electronic access to superior court records, pursuant to rules adopted by the supreme court.

2. See Supreme Court Rule 123 (g)(1)(A) (attached and below):

(g) Remote Electronic Access to Case Records. (1) A court may provide remote electronic access to case records as follows:

(A) *Parties, Attorneys, and Arbitrators.* Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records which are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

D. Pro per litigants are named parties to their case.

E. The Supreme Court Administrative Office directed this writer to inform the Presiding Judge of the Pima Superior Court of this egregious error as it was important for him to know what was occurring.

F. Pima County Superior Court Presiding Judge Denied the Motion by Pro Per party to be provided the same equal remote electronic access and filing privileges as the opposing counsel pursuant to A.R.S. 12-284.02 and Supreme Court Rule 123 (g).

G. Federal Law provides 42-1983 deprivation of rights and 42-1985 Obstructing Justice: specifically, with intent to deny to any citizen the equal protection of the laws, appear to be evident here.

H. Pro per litigants have been denied by the Clerk of the Court (Pima County), failing to comply with A.R.S. 12-283 (F), by opting out of the Supreme Court Rule 123(g) Remote Electronic Access to Case Records and stating they chose not to participate in it.

1. A.R.S. Sup. Ct. Rules, Rule 94, Rule 94 Superior Court Clerks (h) which indicates all records in custody of the Clerk will be maintained per this rule, Rule 29, and Rules of the Arizona Supreme Court.

a. The Rules were not followed, and the clerk failed to participate in Supreme Court Rule 123, refusing equal remote electronic access and filing privileges for one party of a case

b. Pima County Clerk States:

1. **From:** [Hellon, Toni](#)

Sent: 9/23/2016 1:02 PM

Subject: Re: Need access to case online

Actually that access that we provide is something that is not required it's just something that we do. People can only sign up for it with their attorney numbers and other official IDs and so there's no way to register for this if you are not an attorney and I believe I've told you that before. Only attorneys of record can access their own cases -- only their own.

2. **From:** Hellon, Toni <thellon@sc.pima.gov>

Sent: Wed, Dec 14, 2016 10:58 am

Subject: RE: Attorney remote electronic access

Attorneys-of-record, who have registered with our ECR, can view their cases remotely as soon as the document is imaged. They are also copied via email either by us, or by the opposing attorney in the case, depending upon what the document is.

Attorneys are now required by the Supreme Court in Arizona to electronically file (e-file) all Civil documents. In other words, we no longer accept civil case filings at our counter.

3. John Baird of the Pima County Clerk's office on 12/15/2016 stated the Clerk decided not to participate with the Supreme Court Rule 123.

I. This denial of access conflicts with the Equal Protection Clause of the 14th Amendment of the United States Constitution which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

“It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws.”

J. This denial of access conflicts with the “Strategic Agenda” of the Chief Justice of the Arizona Supreme Court which includes:

- a. “Arizonans also are one in believing that all people should be treated fairly, their rights should be respected, and they should be well served by a government that follows the law. Our courts exist to secure these goals.” and
- b. “Our first goal is promoting access to justice as technology and our state’s population and economy continue to change. By implementing electronic case filing and access statewide, identifying best practices for various court operations”

K. It is written by Chief Justice Scott Bales, Arizona judiciary in their *Advancing Justice Together* booklet:

“To earn the support of our communities, we who work in the judiciary must continue to exemplify our deep commitment to fairness, integrity, efficiency, and equal justice under law. I look forward to our work in advancing justice together. —Scott Bales, Chief Justice”

<http://www.azcourts.gov/portals/0/AdvancingJusticeTogetherSA.pdf>

L. The denial conflicts with the Arizona Judicial Council Director of Government Affairs statement that the technological ability is provided and available

M. A Legislative Bill was drafted and re-written at the direction of Amy Love Lobbyist for Arizona Judicial Council, telling Legislative Counsel what to write and has a delayed effective date of January 1, 2018. The delay continues the unequal access of which the Arizona Supreme Court

does not agree with (see K. above), may be unconstitutional under the 14th Amendment of the United States Constitution, no legislative legal team seemed to notice the delay clearly continues the unequal access, separation of powers issues with Love's involvement, and must be immediately corrected.

Tim Fleming

From: Love, Amy <ALove@courts.az.gov>
Sent: Tuesday, January 31, 2017 10:19 AM
To: Russell Bowers
Cc: Norm Moore; Tim Fleming
Subject: floor amendment to HB2220 court records access bill

Good morning Representative Bowers,

Thank you so much for taking the time to listen to our concerns and address them in HB2220! Below you will find the floor amendment I drafted for HB2220 based on our agreement expressed in committee. I saw the bill was held in Rules so I called and spoke to Norm, he and Tim are copied here as well in anticipation of COW. Please let me know if anyone has any questions or concerns. Thank you!

Page 1 strike lines 2-9

Line 17 strike "CLIENTS"

Line 18 after the period insert "ACCESS OR FILING PRIVILEGES PROVIDED TO ATTORNEYS PURSUANT TO THIS SUBSECTION MAY BE LIMITED TO RECORDS OF CASES IN WHICH THE ATTORNEY IS A PARTY OR IS ON FILE WITH THE COURT AS THE ATTORNEY OF RECORD FOR ONE OF THE PARTIES. ACCESS OR FILING PRIVILEGES PROVIDED TO PRO SE LITIGANTS PURSUANT TO THIS SUBSECTION MAY BE LIMITED TO RECORDS RELATED THE PRO SE LITIGANTS OWN CASE."

Respectfully,

Amy Love
Deputy Director of Government Affairs
Arizona Supreme Court
602.452.3662 (O)
602.653.5948 (C)

1. Ms. Love Lobbyist for the Arizona Judicial Council, suggested a Rule Change would correct the issue. Please expedite.

- N. This egregious intentional error provides an unfair advantage for the party who has bought an attorney of whom enjoy remote electronic access and filing access privileges to their cases.
- O. The denial of equal access is discriminating against those who do not buy an attorney, creates a substantial burden for that party who remains a litigant with denied access.
- P. There is not a lawful reason, or Constitutional provision to continue the denial of equal remote electronic access for those litigants who represent themselves.
- Q. The Arizona State Supreme Court may not have had the intention to deny access to the people or to create an unfair advantage for attorneys for years, since 2008, (see attachment Final Fact sheet HB2220) or to deny the basic protections that are guaranteed by the United States Constitution and other Federal laws; however, this Petition seeks equal remote electronic access for the pro per litigants if it is provided to attorneys, inclusive of Family Law cases and be Ordered by the Supreme Court Justices on emergent basis, effective immediately.
- R. The United States Department of Justice in their letter sent out to State Courts in March 2016 (see attached United States Dept. of Justice Letter) urges compliance with equal access, but in Pima County, Arizona equal

access is denied, providing access to only attorneys while denying the Pro Per party, the United States Department of Justice letter reads as follows:

- a. “The Department of Justice has a strong interest in ensuring that state and local courts provide every individual with the basic protections guaranteed by the Constitution and other federal laws, regardless of his or her financial means.
- b. “We urge you to review court rules and procedures within your jurisdiction to ensure that they comply with due process, equal protection, and sound public policy. We also encourage you to forward a copy of this letter to every judge in your jurisdiction; to provide appropriate training for judges in the areas discussed below; and to develop resources, such as bench books, to assist judges in performing their duties lawfully and effectively. We also hope that you will work with the Justice Department, going forward, to continue to develop and share solutions for implementing and adhering to these principles.”

S. The Arizona Courts or government has not proven that the unequal access in this rule is to advance a compelling government interest.

T. There is no legitimate government objective or rational purpose to continue to deny the same access to both parties; it does however exemplify a burden onto the Pro Per litigant who is a party to a case.

U. The petition requests the Supreme Court Chief Justice Order its Judicial Administration to correct the wrong by Ordering the courts and their Presiding Judges to provide equal remote access and filing privileges for

Pro Per litigants immediately, the same remote electronic access which is currently only provided to attorneys, for example in Pima County.

V. The Amended Statute, A.R.S 12-284.02 (see attachment 3) has a delayed effective date of January 1, 2018, which does not provide immediate remedy for active cases now and have been denied by Presiding Judges, ie. Pima County; the delay does provide the unfair advantage to the party with an attorney to continue until January 1, 2018. The Arizona Supreme Court has the power to remedy this imbalance with an Expedited Order:

1. The remedy sought from the Arizona Supreme Court Justice is to provide justice for all by expeditiously Ordering that if the Presiding Judge of the Superior Court provides electronic access and filing privileges to an attorney, the privilege must also be provided to pro per litigants, effective immediately.
2. The Arizona Supreme Court and Chief Justice Scott Bales, must recognize that significant issues are presented in this petition regarding equal justice under law, the petition requests enforcement of his commitment see (K) “***must continue to exemplify our deep commitment to fairness, integrity, efficiency, and equal justice under law***”

<http://www.azcourts.gov/portals/0/AdvancingJusticeTogetherSA.pdf>

WHEREFORE Petitioner showing compelling evidence, circumstances and good cause, respectfully prays and requests the Arizona Supreme Court consider this rule change on an expedited basis with an immediate effective date, consistent with the goal of the Arizona Supreme Court to facilitate equal access to justice, the urging from the United States Department of Justice “We urge you to review Supreme court rules and procedures within your jurisdiction to ensure that they comply with due process, equal protection, and sound public policy”, and which consider the amended Arizona Revised Statute 12-284.02 (A) signed by the Governor of Arizona in March 2017, and render an Administrative Order with an immediate effective date which includes the language of ARS 12-284.02(A):

1. If THE PRESIDING JUDGE OF THE SUPERIOR COURT PROVIDES ACCESS OR FILING PRIVILEGES TO ATTORNEYS, THE PRIVILEGES MUST ALSO BE PROVIDED TO PRO SE LITIGANTS.
AND
2. Change “may” to “MUST” in the Supreme Court Rule 123, (17)(g)(1) and (17)(g)(A):

(17) **Remote Electronic Access.** "Remote Electronic Access" means access by electronic means that permits the viewer to search, inspect, or copy a record without the need to physically visit a court facility.

(c) General Provisions.

(d) Access to Case Records.

(e) Access to Administrative Records.

(f) Access to Records in Paper Medium.

(g) **Remote Electronic Access to Case Records.**

(1) A court ~~may~~ **[MUST]** provide remote electronic access to case records as follows:

(A) Parties, Attorneys, and Arbitrators. Parties, attorneys, and arbitrators ~~may~~**[MUST]** be provided remote electronic access, upon registering, to case records which are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

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Respectfully submitted to the Arizona Supreme Court this 17th day of June, 2017.

/s/ Patricia Cummins

Emailed copy to:

Toni Hellon, current Clerk of Pima Supreme Court

Attachments

1. Supreme Court Rule 123, page 8 (g), current and Amended Versions
2. United States Department of Justice Letter
3. Amended ARS 12-284.02 Governor Signed
4. Final Revised Fact Sheet HB2220

